



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5611-99

3 December 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 27 September 1971 for four years at age 18. The record reflects that you were advanced to ENFN (E-3) and served for 10 months without incident. However, during the two month period from July to September 1972 you received two nonjudicial punishments (NJP) for two brief unspecified periods of unauthorized absence (UA).

You served without further incident until 31 July 1973 when you were reported UA. You remained absent until you were apprehended and returned to military jurisdiction on 13 February 1974. On 15 March 1974 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the foregoing 192 day period of UA. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Thereafter, the discharge authority approved the

request and directed discharge under other than honorable conditions. You were so discharged on 22 April 1974.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been more than 25 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your record of two NJPs and the fact that you accepted discharge rather than face trial by court-martial for a period of UA of more than six months. The Board believed that considerable clemency was extended to you when the request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. The Board concluded your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director